IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 24-11-1995.

CRIMINAL APPEAL NO. 138 OF 1989

For Approval and Signature:

THE HON'BLE MR. JUSTICE H.R. SHELAT.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of Judgment ?

4. Whether this case involves substantial question of law as tothe interpretation of the Constitution of India, 1950 or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

Shri S.T. Mehta, Additional Public Prosecutor, for the appellant State.
Shri J.G. Shah, Advocate for the respondents.

Coram: H.R. Shelat,J.
(24-11-1995)

ORAL JUDGMENT:

The respondents charged with the offences under Section 323, 324, 325, 504, 506 read with 114 of the Indian Penal Code, came to be acquitted by the then learned Judicial Magistrate (F.C.), Radhanpur, delivering a judgment on 20th December 1988 in Criminal Case No. 107 of 1987, consequent upon which the State has preferred this appeal.

2. Briefly stated the case of the prosecution is that at Bavarda, about 5 kms., away from Sitkar outpost, sub-barrage was to be constructed, and therefore relief work was going on. For the purpose of one's own livelihood, Bhimabhai Devjibhai, Devrajbhai, Mangiben, Bhamabhai, Shamabhai, Savajiva Ayar, Jivan Raimal Ayar, Naran Abba and 7 others had gone there. They were

doing labour work assigned to them. The Mukadam had chalked out certain portion of the site-land, and the labourers divided into groups were assigned different portions of the land for digging operation. Because of the election in the village that was held in past respondents and injured were having inimical terms. On 20th February 1987 at 12.00 hours, respondent No.1 was abusing Bhima Devji uttering filthy words. He was requested not to abuse. Instead of being assuaged he got wild, lost the temper, and gave a scythe (dharia) blow on the head of Bhima Devji. Bhamabhai Devraj and Devraj working nearby rushed there and tried to rescue. At that time other also rushed hearing the clamour. When those were trying to rescue, respondent No.3 with the spade he was having, caused injury to Mangiben, while respondent No.2 caused injury to Bhamabhai and Raimal by stick blow and Respondent No.4 caused hut to Jumaben by a stick blow. They also collectively caused injuries by stick or spade blows to Karmabhai, Padma and Khetanbai. All the injured were then taken to the hospital for medical treatment. Bhima Devji went to Vahali police station to lodge the complaint. The police officer registered the offence and started investigation. At the conclusion of the investigation the charge-sheet was filed against the respondents for the abovestated offences before the Court of the learned Judicial Magistrate, (First Class) at Radhanpur. The then learned Magistrate hearing the parties framed the charge against respondents at Exh.4. It was read over and explained to them. They then pleaded not guilty and claimed to be tried. The prosecution-appellant then led necessary evidence. At the conclusion of the trial the learned Magistrate considering the evidence on record found that the prosecution had failed to establish the charge levelled against respondents beyond reasonable doubt. He therefore acquitted the respondents. It is against that order the present appeal has been filed.

3. Mr. Mehta, the learned Addl. Public Prosecutor made sincere attempts in assailing the judgment and order of acquittal passed by the lower court. According to him the learned Magistrate did not appreciate the evidence in right perspective, and without assigning any logical reasons reached to the conclusions not at all tenable in law. The appreciation of the evidence made and conclusions drawn are according to Mr. Mehta, the learned A.P.P., arbitrary, perverse and wholly against the sound principles of law. He therefore urged me to set aside the judgment and order passed by the learned Magistrate and convict respondents. Mr. H.J. Shah, the learned Advocate representing the respondents submitted how the learned Magistrate was right, and there was no error on his part.

4. Mr. Mehta, the learned APP, took me to the entire evidence on record. Ofcourse, all the injured have made the statements supporting the case of the prosecution, and the investigating officer whose evidence is recorded at Exh.70 has

also stated the facts which he came to know during the course of investigation. If the evidence of all the injured along with the evidence of the investigating officer and Doctor is accepted on its face value without scanning certainly, one would be inclined to hold that prosecution has succeeded in bringing the guilt home to the respondents. Let me mention that the evidence led by the prosecution is not to be mechanically accepted. The same has to be dissected considering the rival submissions and law applicable; and as and when possible, resorting to scientific tests and result thereof.

5. Here the investigation it seems is not carried out sincerely taking pains and deeply. The place where the incident happened was examined by the investigating officer for the purpose of drawing the panchnama in the presence of the panchas and others. As Bhama Devji sustained the injury on his head he must be profusely bleeding and that is also testified by other injured witnesses. When the doctor examined Bhama Devji he was bleeding. When injured was bleeding till the time of his medical examination possibility of profuse bleeding cannot be ruled out.The Investigating Officer must not have overlooked the blood at the spot. However the police has not found any blood marks at the scene of offence, and for the same it is explained that there were numbers of workers, and before the panchnama was drawn many might have run here and there through the place of offence as a result pool of blood might have been wiped out. The submission cannot be accepted for the reason that in this case the digging operation of different portions of land called "Chokadi" was assigned to different groups of workers, and the supervisor (mukadam) responsible to maintain accounts would not permit any one to move rapidly with clattering sound. He would prevent the workers from hurtling or moving here and there by having fortification, despite the fact that initially for the purpose of rescuing the victims few would enter the "chokadi" the assigned portion of land, but thereby pool of blood and blood-stained dust would not be obliterated. Absence of blood-mark at the spot is the circumstance on record which prevent me from placing reliance on the evidence of all the injured. When no blood or blood mark is found, as rightly submitted by Mr. Shah the learned Advocate representing the respondents,that there is a reason to believe that the prosecution is suppressing the manner in which the incident happened and also the place of incident. To put it differently, there is a reason to believe that the case of prosecution may be distorted. When that is the case the benefit that arises must go to respondents.

6. The investigating officer, (Exh.70) seized the weapons with which, it is said that respondent caused injuries. All the weapons were sent to chemical analyser as blood-dots were found thereon. But it is pertinent to note that the report of the Chemical Analyzer is not produced for the reasons best known to

the prosecution. When for no good reason the chemical alanyser report is kept back, I am entitled to infer everything against the prosecution, and on that basis it can be said that the injured being inimical, suppressing the correct and true fact, have come before the Court suffusing the case with deceptive coating and thus the condition of the place of incident bereft of blood, foils the prosecution.

7. Ratna Kheta (Exh.31) had rushed to the scene of offence so as to rescue Bhimji Devji and Bhamabhai Devraj. He saw that Bhimji Devji who was injured was profusely bleeding and was lying on the ground in wounded condition. He intervened and took the head on his lap and tried to save him. Likewise Mongiben (Ex.15) tried to confound the assailants. If that is so their clothes must have been blood stained. In order to establish their presence at the spot, the prosecution ought to have produced the clothes put on by both, but those clothes are not produced, and no explanation is offered why ? When best available evidence is not collected and expert opinion thereon is not sought by the prosecution, it can be assumed that the case of the prosecution is tainted with alterations and improvements and presence of these two witnesses may be suspicious. Their evidence therefore cannot be accepted without cogent corroboration.

8. In this case, there were 600 to 700 workers working at the site, and hearing shreiks few of them were no doubt attracted to the scene of offence. As transpires from the evidence of all the injured witnesses about 100 to 150 workers had rushed to the scene of offence and about 25 to 30 workers had entered the portion assigned to the injured for the purpose of digging the earth. Neither of the persons assembled there is examined, nor reasonable explanation is offered. The prosecution has rest contented with the evidence of all the injured having enemity with respondents though independent evidence was available. For the reasons best known to the prosecution the independent evidence is suppressed. I am aware of the fact that Court can convict even on the evidence of injured after all quality is material and not the quantity; but in that case the evidence of injured must be free from doubt and appealing to the conscience of the Court. In this case, evidence of neither of the injured witnesses is appealing for the reasons stated hereinabove. For providing assurance one of the workers assembled there ought to have been therefore examined. It may be stated that because of the Village election that took place in immediate past, the respondents and injured were divided into two groups, and they were having arch-rivalries. The enemity cuts both the ways. Because of the inimical relations, a man may tell a lie or with all vigour he would be telling the truth. When both the possibilities are there, the prosecution must lead the evidence so as to eschew the possibility likely to impair its case. In this case, for the reasons stated hereinabove, prudence dictates

that independent corroboration should be insisted upon, which is wanting. Non-examination of one of the workers assembled there speaks volumes against prosecution.

9. Under the circumstances, the evidence on record is suffering from inherent improbabilities, and the doubt that casts benefit thereof must go to respondents. In view of the case therefore, the learned Magistrate was perfectly right in acquitting the respondents. I see no justifiable reason to interfere with the judgment and order passed by the learned Magistrate below. The appeal is, therefore, devoid of merits and it is liable to be dismissed. In the result, the appeal is hereby dismissed and the judgment and order recording the acquittal of the respondents are maintained.

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